

PEDLEY ROSS ZIELKE GORDINIER & PORTER

ATTORNEYS AT LAW

FIFTH FLOOR

450 SOUTH THIRD STREET

LOUISVILLE, KENTUCKY 40202

(502) 588-4600

FAX (502) 584-0422

July 26, 1990

LAWRENCE L. PEDLEY
ROBERT P. ROSS
LAWRENCE J. ZIELKE
JOHN K. GORDINIER
MICHAEL W. LOWE
P. STEPHEN GORDINIER
FRANK G. SIMMONS III
CHARLES F. MERZ
WILLIAM H. MOONEY
KATHRYN H. HOGAN

WILLIAM C. SPONE
J. CHESTER PORTER
OF COUNSEL

JOE A. WALLACE
COUNSEL

Anna Thode, Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044

Re: Lees Lane Landfill

Dear Anna:

This is to provide MSD's response to the amended draft Consent Order and Attachment I thereto. A review of the history of these documents from MSD's perspective is appropriate to establish the context of these comments.

MSD was named a PRP for this Site. EPA proposed to assess 6% of the clean-up costs as MSD's share. In September, 1988, MSD tentatively offered to undertake testing and maintenance ("O&M") of the Site, in lieu of paying the assessment. It has been consistently recognized by both parties that in the event agreement cannot be achieved as to the terms of the Consent Order, MSD will pay the assessed amount equal to 6% of the remedial costs.

EPA provided MSD with a proposal developed by EBASCO Services Incorporated, purporting to reflect the scope of work and the level of sampling and analysis EPA intended during the O&M period. The EBASCO Plan provided for five years of monitoring and maintenance activities. It anticipated that procedures and protocol for obtaining samples and conducting analysis would be determined by the agency which undertook the O&M program. EBASCO's decontamination procedures were relatively simple as were sample handling, identification, preservation, chain-of-custody and shipment procedures. EPA estimated the value of the O&M program devised by EBASCO at \$500,000.00.



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SDMS

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MSD's responsibilities in operating the municipal sewer system have provided experience in mechanical maintenance and in conducting limited water and gas analysis. MSD is thus poised to undertake O&M responsibilities for the Site to the extent of its expertise. Additional efforts which MSD may be asked to undertake as part of the O&M program will of necessity require MSD to obtain additional equipment and hire additional personnel. The extent of the O&M plan will dictate the additional costs which can be expected.

MSD was interested in providing a public service while satisfying EPA's claim and avoiding litigation. MSD's assessment of its costs for the five year plan, based on tasks enumerated in Table 8.1-1 of the EBASCO plan was approximately \$300,000.00 for the five year period, including start-up costs. The cost was deemed by MSD to be reasonable despite the fact that the value of the O&M program as determined by EPA was approximately twice the amount which EPA intended to assess against MSD.

During the course of subsequent meetings, MSD learned that EPA sought a 30 year commitment, not the 5 year program referenced in the EBASCO proposal. Further discussion made it apparent that EPA expectations differed from MSD's understanding on a variety of technical matters as to the extent of "maintenance" efforts which EPA wanted undertaken.

MSD personnel have inspected the Site and determined that a number of conditions exist which it is not willing to undertake as part of the O&M plan as follows:

1. The riprap material is inadequate in size and thus readily subject to washout. MSD declined to undertake maintenance and repair of riprap.

2. The clay cap was shifting and cracking. MSD declined to take responsibility for maintaining the integrity of the clay cap.

3. The access road and the roadway through the Site was rutted and potholed. MSD declined to be responsible for the roadways.

4. MSD declined to undertake repair/replacement of any gas manifolds or well equipment below grade.

5. The Site has been used by private citizens as an automatic weapons firing range and facilities have been damaged by fire. MSD declined to take responsibility for construction and equipment damaged by vandals.

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6. Blowers, blower motors and similar electric equipment have foreseeable useful lines. MSD was unwilling to undertake the cost to warrant equipment which MSD deems to be capital expenditure.

7. MSD declined to undertake any activities regarding gas and water wells off-site.

MSD is having copies made of a video tape recording of existing conditions, a copy of which will be provided in the immediate future.

It is evident that EPA did not intend that the O&M plan incorporate maintenance, repair or replacement of these enumerated conditions. EPA has been performing O&M tasks through EBASCO under a nationwide contract agreement since completion of the remedial action. MSD believes that the conditions described above have been allowed to occur and have remained unrepaired. In addition, we have now been advised that at least one underground gas well manifold is plugged and EPA has not required EBASCO to undertake cleaning the blockage.

In contrast to the standard of maintenance and repair required of EBASCO, and the limits of responsibility MSD has consistently maintained it is willing to undertake under the O&M program, Attachment I to the proposed Consent Order purports to require MSD to undertake far greater responsibilities than previously represented by EPA, and anticipated by MSD, and which MSD has consistently rejected as part of the settlement with EPA. In addition, the number of tests specified in Attachment I, the level of testing specified and the extensive Quality Assurance/Quality Control measures far exceed MSD's expectations based on Table 8. 1-1 and related provisions of in the EBASCO plan.

MSD has concluded that Attachment I contains the scope of work, or "tasks", which EPA wants accomplished. Appendix A through K specify the standards and protocols desired by EPA in performing these tasks. MSD has assumed, and you have confirmed, that the scope of efforts set out in the Appendices is not subject to negotiation.

MSD estimates that its costs for performing the O&M plan contained in Attachment I, without undertaking any of the activities which MSD has consistently declared beyond the scope of any agreement, will exceed \$3,000,000.00 for the 30 year maintenance period. Because the extent of

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remedial repair costs itemized above is unforeseeable, it is impossible to project the full cost of performing all of the tasks specified in Attachment I.

Notwithstanding that the scope of maintenance, sampling and testing far exceeds MSD's expectations and EPA's assessment of the costs for the O&M program, MSD remains willing to undertake an O&M program for the Site and to perform all of the remedial repair tasks identified in Attachment I if agreement can be obtained as to cost limits.

MSD will undertake the sampling and testing tasks specified in Attachment I, with the exception of sampling from private water wells, in substantial conformity with the procedures and protocol set out in the Appendices, to the extent they are applicable. In addition, MSD will undertake maintenance of the Site and perform all tasks designated in the Attachment under the following conditions:

1. Prior to assumption of responsibilities under the O&M program EPA will perform all work necessary to bring the Site up to the standard to which EPA will hold MSD responsible.

2. EPA will enter a separate contract with MSD by which EPA will pay all of MSD's costs in excess of \$1,000.00 per quarter for the following tasks:

- a. Repair or replace riprap.
- b. Repair or regrade cracking, slumping, or other signs and effects of movement of slopes.
- c. Excavation to clean, repair or replace all or any part of the gas collection and water wells.
- d. Repair or replace structures including the blower house, weather data collection stations, etc.
- e. Repair or replacement of gates and barriers.
- f. Repair of access road and on-site roadways.
- g. Repair or replacement of clay cap.
- h. Regrading, backfilling or other repair of swales, ponding areas and similar indicia of settlement or subsidence.

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i. Repair of any other condition resulting in exposure of leachates, chemical containers, filter media, etc.

j. Replacement of blowers and pumps.

k. Repair or replacement of any equipment damaged by vandalism.

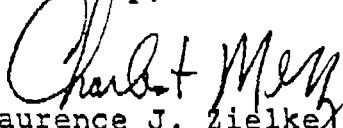
3. Since MSD is not in the business of performing remedial work at superfund sites, it must be understood that MSD may contract out, at MSD's sole option, any or all of the work itemized above to a contractor approved by EPA for the respective task.

MSD specifically declines to undertake water sampling from wells off-site. MSD has established that one such well is enclosed in the property owner's residence. In any event, this is consistent with MSD's position as to off-site activities which it has been willing to undertake.

In consideration of the foregoing discussion and proposal the comments appended hereto are provided for your consideration and for further discussion. You have proposed that EPA and MSD technical personnel meet to resolve respective concerns. In the interim MSD will review and assess the documents which you provided under your cover letter of July 19, 1990.

MSD reserves the right to rescind its offer and to pay the amounts assessed by EPA for the remedial work performed, as previously agreed, if mutually acceptable terms cannot be established.

Sincerely,


Laurence J. Zielke
Charles F. Merz

CFM:cb

cc: Gordon Garner
Christina Heavrin
Carl Neumeyer
Carl Taylor
Derek Matory (via telefax)
athode,msd

ADDENDUM

1. THE FOLLOWING CONSTITUTES MSD'S PROPOSED CHANGES TO THE ADMINISTRATIVE ORDER REFLECTING MSD'S POSITION AS TO THE SCOPE OF WORK THEREUNDER.

A. Section III (B), fifth line: Substitute the word "being" for the word "including" so as to read "additional response action at the Site, being the work set forth in Attachment I, . . .".

B. Section V, Paragraph 9, first line: Delete and insert to read as follows: "Respondents shall substantially comply with Quality Assurance, Quality Control and chain of custody procedures specified in Attachment I."

C. Section V, Paragraph 1: Delete and insert to read as follows: "Respondents agreed to perform all monitoring activities and operation and maintenance work in substantial compliance with applicable provisions of the Operation and Maintenance Plan set forth in Attachment I. . . ."

D. Section V, Paragraph 3, line 6: Insert to read as follows: "in substantial compliance with the procedures and protocols incorporated in Attachment I and in compliance with all applicable laws and regulations."

E. Section V, Paragraph 20, line 7: Insert to read as follows: "negotiations shall end when EPA provides its final position. . ."

F. Section V, Paragraph 21, last full line: Insert to read as follows: "they may be shortened upon mutual agreement and in accordance with notice by EPA."

G. Section V, Paragraph 23: Add a new final sentence to read as follows: "Nothing herein shall be deemed to constitute a waiver by Respondents of any right to seek judicial review of any determination made by EPA."

H. Section V, Paragraph 24, first line: Insert to read as follows: "If Respondents fail to substantially comply with any requirement. . ."

I. Section V, Paragraph 27, second and third lines: Insert to read as follows: "failed to substantially implement the work required pursuant to this Consent Order or any substantial portion thereof. . ."

Eleventh line: Delete and insert to read as follows: "performance of the work shall run no more than ten (10) days." (Delete balance of the sentence).

J. Section V, Paragraph 28, line 1: Insert to read as follows:

as follows: "naming and producing fact witnesses under the control of Respondents . . ."

K. Section V, Paragraph 39: Add at the end to read as follows: "and when EPA provides certification that the Site has been restored/repaired to such a condition as to establish the standard of performance for work under the Plan."

L. Section V, Paragraph 40, first sentence: Add to the end to read as follows: "completed but in no event shall the termination be extended beyond the 30th year following entry of this Consent Order, unless extended by written agreement of all parties."

M. Additional provisions must be developed and inserted to reflect the monetary limit for which Respondents are responsible for specified tasks.

2. MSD PROPOSES CHANGES TO ATTACHMENT I AS FOLLOWS:

A. Section 2.0, first sentence: Insert to read as follows: "Operations and Maintenance (O&M) activities, within monetary limits, include:"

(1) Delete "Private Well sampling".

B. Section 3.1: Delete at the end of the final sentence the phrase "for approval".

C. Section 3.2, line 3: Insert to read as follows: "Guidelines (FTGs) shall be substantially followed as provided herein."

D. Section 3.3: Insert to read as follows: "Selected Quality Control (QC) samples shall be collected in substantial compliance with the description provided below as part of the sampling event."

E. Section 3.4, second line: Insert to read as follows: "Laboratories in substantial conformity to the CLP analytical protocol. Such EQO level IV. . ."

F. Section 3.5: Delete references to private well, including the entire last sentence on page 9.

G. Table 3.1-2: Delete reference to private well.

H. Section 3.10, first line: Delete and insert to read as follows: "All sampling equipment is to be decontaminated in substantial compliance with procedures set forth in the SOP. . ."

sentence, insert and add to read as follows: "Appropriate repairs required as a result of deterioration shall be made as soon as any such damage is discovered. All repairs resulting from vehicle damage and vandalism shall be made at the direction of EPA within the monetary limits of over/and above work."

Paragraph 4, page 16, lines 4-5: Delete and insert to read as follows: "or dumping shall be noted and reported to EPA.

J. Section 4.2, paragraph 1: Reference is made to sampling "before, during and after each sample is collected." It is presumed that this means monitoring shall occur at the beginning of the 8 hour collection period, midway through the 8 hour collection period, and at the conclusion of the 8 hour collection period. If some other schedule of ambient air monitoring is anticipated, clarification must be provided.

The term "breathing zone" as used in this section does not have a defined meaning. It is presumed to mean the general area in which the sampling and monitoring is undertaken. If another meaning is intended clarification must be provided.

Paragraph 5, top of page 17, line 6: Delete, amend and insert as follows: "require that operations stop, evacuate the site, and, report to EPA and local authorities. EPA shall determine when all areas are returned to a safe condition. . .".

K. Section 4.2(a).1, second line, page 17: Insert to read as follows: "barometric pressure shall be collected and reported for:".

Page 18: Delete "calculating air dispersion" and "determining environmental exposure from airborne contaminants" (top page 18). Establishing air dispersion is an extremely costly and time consuming activity. Agencies of Jefferson County are in the process of charting air dispersion patterns in various portions of Jefferson County but have not developed air dispersion patterns for the areas surrounding the Site.

L. Section 4.2.A.2: MSD has assumed "real time monitoring" means continuous monitoring of methane migration and recording the results three times during the sample collection period. If some other meaning is intended clarification must be provided.

M. Section 4.2.A.4, paragraph 3, line 6: Insert to read as follows: "collected substantially in accordance with Appendices D. . . and E."

N. Section 4.3.A, paragraph 2: Add to the last sentence to read as follows: "valves and piping shall be repaired or replaced, subject to established monetary limits."

Third item, page 25: Insert an additional sentence to read as follows: "Repair or replacement of the blower or blower motor shall be subject to established monetary limits"

O. Section 4.3.B, first line: Insert to read as follows: "The gas collection system shall be balanced by EPA prior to turning the Site over to Respondents, and, by Respondents on a semi-annual basis. . ."

First itemized subparagraph, page 25, line 6: Insert to read as follows: "possession of Jefferson County. If the velocity meter and manometer is no longer in the possession of Jefferson County, EPA shall purchase and provide a velocity meter and manometer at the time the Site is turned over to Respondents); and. . ."

First full paragraph, page 27, line 3: Delete "insurer" and substitute "determine".

Last paragraph, page 27, last sentence: Insert to read as follows: "These wells shall be repaired subject to established monetary limits so that they meet design criteria."

First paragraph, page 29: Add a new final sentence to read as follows: "Cost for removal backfill, making repairs below established grade and replacing backfill which, with other activities identified in Section _____ exceed the established monetary limit per quarter, shall be reimbursed to Respondents by EPA."

P. Section 4.4A, line 3: Delete reference to the private well.

Q. Section 4.4B, line 1: Delete reference to one private well.

Add to last sentence, page 29 to read as follows: "unusual analytic results, costs of which shall be born by EPA."

R. Section 4.4.C.1, paragraph 2: Delete in its entirety. MSD has determined that the private well at 6707 Glenbrook Avenue is undercover and within the structure erected at that site and is not readily accessible. MSD believes that it may lack sufficient authority to regulate the water quality of the well for the protection of the public.

MSD has consistently maintained that it does not intend to undertake to conduct water samples off-site.

S. Section 4.5.A, paragraph 1, lines 3-4: Delete the phrase "during periods of peak and minimum river flow." During peak flow, the river bank slopes may not be accessible or observable. In any event, it is impossible to predict the peak and minimum flow periods of the Ohio River. MSD will undertake to make this inspection when it does its regularly-scheduled quarterly sampling.

T. Section 4.5.B: MSD does not understand the inclusion of the term "drains" to described additional instrumentation which may be required. The term should be deleted or clarification provided.

Add a sentence at the end of page 34 to read as follows: "Installation of additional instrumentation will be subject to the established monetary limitations."

U. Table 4.A-1: Under "Monitoring Frequency" delete all reference to inspections at peak and minimum flow in the Ohio River as discussed above. Delete reference to additional inspections if severe area flooding occurs since this is nowhere required in the body of Attachment I.

V. Section 4.5.C, paragraph 2, page 40, line 4: Insert to read as follows: "upon approval by EPA, subject to established monetary limits."

W. Section 4.6, paragraph 4, lines 2 and 3: Delete and insert as follows: "regrading, clay replacement and compaction, subject to established monetary limits. Re-establishment of vegetative cover by reseeding or otherwise, if required, may be deferred. . .".

Paragraph 5, page 40: Delete "and on an as needed basis from October through April." The specific provision for determining the "as needed basis" is established in the second paragraph, page 41.

Second paragraph, page 41: Delete the numerical "4" and insert numerical "8". This is the standard employed by MSD in mowing all of the adjacent areas of the Site.

Delete entirely the last sentence of the second paragraph on page 41. MSD will not undertake to remove grass clippings.

X. Table 4.A-3: Under Maintenance Action related to "Institutional controls", insert to read "repair as appropriate. subject to established monetary limits."

Under "Maintenance Action" related to Area-wide site conditions," insert to read "Regrade/Repair subject to established monetary limits."

Under the task "Gas monitoring well-protective casing damaged, missing or rusted," add under the "Maintenance Action" to read as follows: "Repair/Replace, sand and paint protective casing above grade; activities below grade are subject to established monetary limits."

With regard to the "Maintenance Observations" related to tubing, fittings and valves, insert under the "Maintenance Action" required" to read as follows: "Repair/Replace as necessary above grade; all such repair and replacement below grade is subject to established monetary limits."

Under the general task "System Maintenance", with regard to "Maintenance Observations" of vandalism to the blower house wells or moisture traps, structural damage to blower house, blower not operating or visibly damaged, alarm and blower controls not functioning, and caps, plugs or piping (below grade) damaged or missing, all Maintenance Action entries shall indicate that it is "subject to established monetary limits."

All references to the observed condition of damage to protective casings, pipes, manifolds, valves, and the like, shall include the description "above grade" so as to distinguish between repairs and replacements of such items below grade, which activity is subject to the established monetary limits.

With regard to the observation of "High concentrations of contaminants", delete under the Maintenance Action "protect public and environment".

With regard to all Maintenance Action for riprap, slope and drainage swales, delete the phrase "repair if necessary" and insert "report to EPA." Similar amendments should be inserted under the Maintenance Action related to natural slopes.

As to possible changes in the frequency of survey activities, MSD will adjust the frequency of surveys as directed by EPA.

With regard to the Task identified as "clay covers" and the Maintenance Action related thereto, delete the phrase "repair as necessary" and insert "report to EPA."

As previously noted, under the Task "mowing", MSD will mow the grass when it reaches 8 inches. However, MSD will not undertake to remove grass clippings.